SPEECH

OF

HON. J. R. UNDERWOOD, OF KENTUCKY,

ON

THE SLAVERY QUESTION.

DELIVERED

IN SENATE OF THE UNITED STATES, TUESDAY, APRIL 3, 1850.

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THE SLAVERY QUESTION.

The resolutions submitted by Mr. BELL, which Mr. FOOTE had moved to be referred to a committee of thirteen, being under consideration—

Mr. UNDERWOOD said: Mr. President, I wish to reply to the gentleman who has just taken his seat.

Mr. FOOTE. Does the Senator from Kentucky wish to do so at this time?

Mr. UNDERWOOD. Just as well now as hereafter, for I am very desirous to economise time. In my opinion, Mr. President, the settlement of the agitating questions now before the country will depend in a very great degree upon the passage by the present Congress of a proper bill for the reclamation of fugitive slaves. I propose at this time to say something in reply to the gentleman who has just taken his seat; and I may ask the indulgence of the Senate to say something hereafter on the general questions involved in the resolutions submitted by my colleague. From some remarks made by the gentleman from New Hampshire [Mr. HALE] the other day I thought there would be an attempt to establish a tribunal, under the authority of Congress, to settle conclusively and forever the question of the slavery or freedom of a fugitive in the State in which he may happen to be apprehended. I thought I saw that foreshadowed in the remarks made by the gentleman from New Hampshire; and I then took occasion to submit a few suggestions by way of reply. I now hear it distinctly avowed by the gentleman from Connecticut [Mr. BALDWIN] that such is his plan; that the tribunal to be established must not be a mere commissioner, limited in his powers to those usually conferred upon mere courts of inquiry, and authorized, in case it appeared that the negro arrested was actually a fugitive from labor, to direct his return to the State and jurisdiction from which he escaped; but that it must be a judicial tribunal, vested with full power and authority to decide ultimately and finally whether such fugitive was rightfully and legally held to labor in the State whence he fled; in other words, to adjudicate and determine the question of freedom or slavery.

Now, sir, presenting the question in that point of view, it becomes one, in my judgment, of vast importance to the people I represent; and I cannot remain silent and discharge the duties which I conceive I am under to them. Suppose the gentleman's court, vested with full powers, should be constituted, will the Senate be pleased to consider the probable results of its operations? A slave from Kentucky is arrested at Detroit, in Michigan; (recollect that it is only necessary to cross a river about a mile wide to get into Canada;) he is arrested in Michigan, and, according to the plan now suggested for consideration, the tribunal which is to decide whether or not he shall be returned to Kentucky, is also to decide the question of his freedom or slavery, and that forever. How long will it take to prepare the case for a final trial? Will any gentleman answer that? Can it be done in a week; in a month; or in six months? Say a week, sir—and every one here must know that it will take ten times that long—but say a week; what is to become of the slave arrested in the mean time? Is he to be put into jail and kept there until the day assigned for the trial? The northern States, many, if not all, refuse to allow the use of their jails for such purpose. Will he have any sponsors to enter into bond and security for his appearance upon that day? Will gentlemen be pleased to consider the question what is to become of the slave between the time of his arrest and the time fixed for the final adjudication of this new tribunal upon the question of freedom or slavery?

Now, sir, those who speak of constituting this tribunal ought to consider that question, and tell us what, in the mean time, is to be done with the fugitive. I can tell what will be done in a certain contingency. If by the operation of this new judicial machinery you allow the fugitive to go at large, knowing himself to be a slave, before the time arrives for trial he will cross the river, get into Canada, and there is an end of the whole affair. Sir, I speak with some practical knowledge on this subject. A former neighbor of mine, but now a resident of Missouri, lost one of his slaves. He arrested the slave in Michigan; upon the arrest a mob relieved the negro; an action of assault and battery and false imprisonment was instituted in behalf of the slave against the master, who was held to bail in some two or three thousand dollars, and for want of bail was imprisoned. The negro, thus at liberty, while the master was in jail, crossed the river and made his way into Canada. I was requested to send the testimony to show that the negro was a slave, and that Mr. Dunn, the individual thus confined, was his master. This I accomplished, and Mr. Dunn was soon relieved, but his slave was gone, irreclaimably gone. Now, here is a practical case. I put it to gentlemen to tell me, under this new judicial tribunal, what is to be done with the slave between the arrest and day of trial? Shall he be confined five or six months during which time you are taking preparatory steps for final adjudication? Or is he to go at large and

cross over into Canada when he pleases to do so? We all see how it will operate. Sir, I object to this idea now broadly advanced by the gentleman from Connecticut, that this new tribunal which we are about to establish shall be vested with the power of finally deciding the question of slavery or freedom. I think, under the Constitution of the country, it is not necessary to grant any such power to this new tribunal. My friend from Connecticut seems to suppose that the question of freedom or slavery is so intimately and essentially involved in the inquiry whether a person be a fugitive from labor, that you cannot avoid deciding it under the Constitution. Well, sir, if he be right, if it be enjoined by the Constitution of the country, I admit that we are bound to comply with the constitutional injunction, whatever it may cost; although its practical operation would probably be the liberation of every slave who reaches the territory of a non-slaveholding State.

If we are to have a new tribunal, judges, and jurors—a regularly organized court, ignorant of the laws of the State from which the fugitive escapes, and upon which, in ninety-nine cases out of a hundred, the rights of the parties depend—then the cost of the pursuit of a slave, with the expense, delay, and harassments incident to a protracted litigation before such a tribunal, will be more than the slave is worth, and the master will be the loser, even should he *win* the suit. I therefore shall say to my constituents, if a slave escapes, and the remedy for his recovery is no better than that proposed by the gentleman from Connecticut, "Give him up; do not waste your money and your time in the unprofitable contest." Are we bound by the Constitution to create this new judicial tribunal, having the powers of final decision upon the master's right and title to the slave? I think that all we are bound to do, is to ascertain, through some appropriate and proper tribunal, whether the individual arrested be *prima facie* a fugitive from labor. If a *prima facie* case is made out, I insist, if we respect and obey the Constitution of the country, the fugitive must be restored to the jurisdiction whence he fled, and there the investigation and trial in relation to the ultimate question of freedom or slavery should take place.

Now, sir, can that position be maintained by fair argument, and a proper view of the Constitution? The expression is, that fugitives from service or labor "shall be delivered up on claim of the party to whom such service or labor may be due." The gentleman says that you must therefore ascertain whether the fugitive was rightfully held to service or labor in the State whence he fled. The Constitution does not prescribe the extent of the investigation, nor is it limited by express terms to the ascertainment of a *prima facie* case of slavery. It does not declare that the whole merits of the master's title shall not be fully considered and determined. I am therefore not prepared to say that if Congress were to organize a court, and vest it with final and conclusive jurisdiction, that the act would be unconstitutional. But it is certain that the act passed in 1793 did not go further than to provide for the restoration of fugitive slaves, upon a prompt examination before the magistrates of the States and federal judges. Under this act no jury trial was required; nor would the proceedings, in case the fugitive was remanded to the State whence he fled, constitute any bar or obstacle to the institution of a suit for the recovery of his freedom. In practice, therefore, the proceedings under the act of 1793 were such as usually occur in examining courts, of criminal jurisdiction, where, if a *prima facie* case or strong presumption appear against the party arrested, he is sent to a higher tribunal, vested with full power to try and decide the whole case on its full merits. Now, sir, although it may be constitutional to enlarge the powers of the judges or commissioners to whose jurisdiction our fugitive slaves may be given, and to extend it greatly beyond the power conferred by the act of 1793, still such enlargement of their power is not demanded by the Constitution. To create courts, judges, and juries to decide finally and conclusively on the rights of the master, as is now proposed, cannot fail to operate most prejudicially to him.

The gentleman from Connecticut concedes that apprentices, bound for a term, escaping from their masters, may be reclaimed like fugitive slaves, and equally fall under the operation of the Constitution of the United States. We know that apprentices for a limited time are not regarded in the light of slaves. We have, I suppose, in all the States, articles of indenture entered into before the county court, or some court of record, by which apprentices are created. Now, in the case of an apprentice, would my friend contend that this new tribunal which is about to be created shall readjudicate upon the articles of apprenticeship, and nullify the record which the individual claiming the apprentice shall present—a record made in another State? Yet the question whether the boy is rightfully or wrongfully an apprentice may be reinvestigated, and the record of his apprenticeship may be set aside by the appellate court in the State where the business originated. It belongs to the appellate judicatories of the States to determine whether the records of their inferior tribunals have been rightfully or wrongfully made up. State laws provide, in the case of pauper parents unable to support their infant children, that the children may be taken by the county authorities and put to labor, shall be made apprentices, and serve a master; and the obligation which the master comes under is a matter regulated by law. It is always a judicial question whether the facts on which the apprenticeship in such a case depends, authorize the court to take a child from its parent and bind it as an apprentice. The degree of poverty of the parent, the condition of the child, and many other circumstances, are to be considered in determining whether the law will justify the court in taking and binding the child to a master. But when the court decides and makes up the record, whether rightfully or wrongfully, I deny that this Government ought, and doubt whether it constitutionally can assume a jurisdiction to vacate and nullify the records of a State upon an inquiry whether the apprentice be or be not a fugitive from labor. So, in like manner, the laws of a State which determine who are and who are not slaves, should be applied and interpreted by State authority; and, in my opinion, Congress ought not, if it could, to devolve the final decision of questions growing out of State legislation in relation to slavery upon the inferior federal tribunals which it may be necessary to create for the purpose of restoring fugitive slaves.

Now, sir, I put it to the gentleman—using his own illustration which he has just given us—I put

to him to say whether, in a case of an apprentice, this Congress is to institute a tribunal in the State of Ohio, or Illinois, or Connecticut, to revise the acts of Kentucky, Virginia, and other States on matters of apprenticeship? Shall we undertake to establish tribunals with power to nullify a record of apprenticeship made up in Kentucky? Shall the lowest officers acting under federal authority determine that a person claimed as an apprentice, or, to use another term, as a fugitive from labor, ought not to be returned to the jurisdiction whence he fled, because the local tribunal, the State court, erred and did not understand nor perform its duty in making up the record?

Well, sir, let us see if there are any other illustrations which will bear upon this argument.

The Constitution requires that the States shall deliver up fugitives from justice. The question occurred to me, in the course of the remarks of my friend, can a man after he has been convicted, be restored, if he flies from a penitentiary, as a fugitive from justice, in the sense of the Constitution?

A SENATOR. Certainly he can.

Mr. UNDERWOOD. Yes; I suppose he can. That was the conclusion to which my mind came: but I doubt very much whether that idea entered the mind of the framers of the Constitution.

Certainly, the arrest and bringing offenders to trial and punishment were the leading objects to be attained by this provision of the Constitution; and it is not unreasonable to suppose that the wise men who framed it did not look to the chances of escape after conviction as sufficient to make the insertion of such a provision necessary. However that may be, yet in the fulfillment of the provision requiring the surrender of fugitives from justice, it may be important to determine how far the States and the General Government are bound to go in its execution. What rules are to govern? Suppose a convict escapes from the penitentiary of Kentucky and flees to the State of Ohio: when he is demanded can the Governor of Ohio, or other authorities of that State, go behind the record of his conviction and reinvestigate his guilt, and thereupon refuse to deliver him up, because on such investigation his innocence was manifest? The act of Congress respecting fugitives from justice, provides that a copy of an indictment found, or an affidavit made before a magistrate, shall be sufficient to base a demand for the delivery of the fugitive. Can the fugitive be permitted to exculpate himself by producing counter-evidence before the Governor who directs his arrest, or before the judge who may grant him a writ of *habeas corpus*? The practice, so far as I am informed, has generally been to reject exculpatory evidence, and to deliver the accused, so that he may be taken to the State where the alleged offence was committed for trial. This, however, has not always been done. There are exceptions. But ought Congress, in legislating with a view to carry out this constitutional provision, undertake in any way to organize a tribunal in the State where the arrest is made, and to vest such tribunal with power to inquire and decide whether the individual demanded is properly a fugitive from justice or not? Comparing the language of the sections in the Constitution relating to fugitives from labor and fugitives from justice, and there appears to be as much foundation for an argument to justify a thorough investigation of the guilt of the person alleged to be a fugitive from justice, as there is to go fully into the question of slavery or freedom in respect to a fugitive from labor. The two sections read as follows:

"No person held to service or labor in one State, under the laws thereof, escaping into another State, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on the claim of the party to whom such service or labor may be due."

"A person charged in any State with treason, ["charged," you see, is the expression here,] felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

Now, sir, the point I am investigating is, whether there is any substantial difference between these two clauses of the Constitution in reference to the powers of the tribunal which Congress may find it necessary to create with a view to enforce these constitutional provisions. If there is an obligation, as the gentleman from Connecticut insists, binding Congress to invest the tribunal with full authority to decide the question of slavery or freedom, in reference to fugitive slaves, is it not equally obligatory on us to invest the tribunal with power in reference to fugitives from justice, to decide upon the innocence or guilt of the fugitive? "A person charged with treason, felony, or other crime, who shall flee from justice." Mark the language: "*Who shall flee from justice.*" Now, sir, does not that expression give you the right to inquire into the guilt or innocence of the alleged fugitive from justice, just as much as the other clause gives the right to ascertain whether the alleged fugitive from labor is certainly a slave? If in the last case you are bound to go into the question of slavery or freedom, must you not, in the other case, go into the question of guilt or innocence? How is it possible for any one to be a fugitive from justice unless he is guilty of some crime? If it had been the design of the members of the Convention to have all persons *charged* with treason, felony, or other crime, delivered up, to be removed to the State having jurisdiction of the crime, without inquiry into their guilt or innocence before the delivery, it seems to me the idea would have been better expressed by omitting the words "flee from justice." The insertion of these words, therefore, has laid a foundation upon which it may be very plausibly contended that the authorities of a State are not bound to deliver a person charged with a crime until upon investigation his guilt shall be manifested. But that construction of the Constitution has not prevailed. The act of Congress "respecting fugitives from justice, and persons escaping from the service of their masters," passed in 1793, is the best exposition of the true meaning of the Constitution. It is worthy of remark that this act includes both fugitives from justice and fugitives from labor, and does not in respect to either require a thorough and full investigation. The presentation of an indictment or affidavit against the fugitive from justice, and the presentation of affidavits or oral testimony against the fugitive from labor, are made sufficient to require the delivery of the fugitive, so that he may be taken to the State from whence he fled. It will be seen, by inspecting this early act of Congress, that it is only necessary to make out a *prima facie* case, and that may be done by *ex parte* evidence. I think, then, sir, there is nothing in the Constitu-

tion of the United States which requires us to give this new tribunal the power of ultimate and final decision.

The act of 1793 has not made the decisions under its provisions in reclaiming fugitives a final adjudication on the question of slavery or freedom. How does it happen, if the Constitution required that to be done, that Congress has slept upon its duty in this respect from the foundation of the Government down to the present day? How does it happen that the present generation knows more about the meaning of the Constitution in reference to fugitives from labor than those who made it and put the Government in motion? Have we any right to charge the illustrious dead with being derelict in the performance of their constitutional duty? Sir, I have no faith in these recent discoveries, which, after the lapse of half a century, find that Congress, to perform its constitutional duty, must institute a tribunal that shall decide the ultimate question of freedom in a case between the master and slave, in a State where the laws upon which the institution of slavery rests are unknown.

Well, sir, if the scheme suggested by the gentleman from Connecticut does not prevail, what should we do on this subject? I think we ought to establish a tribunal whose powers should not exceed those conferred by the act of 1793. That act purports to confer jurisdiction upon the magistrates of the States. The decision of the Supreme Court in the case of Prigg *vs.* the State of Pennsylvania declares that the magistrates of a State are not *obliged* to execute the provisions of the act of 1793 relating to fugitives from labor, although they might do it if they pleased. By the legislation of many of the non-slaveholding States since that decision, their magistrates have been prohibited, under pain of fine and imprisonment, from executing the act of Congress. All discretion has thus been taken from them by *State legislation*. Hence the necessity of now providing some substitute for that machinery, put into operation by the act of 1793, but which has been destroyed by the hostile legislation of the non-slaveholding States. Nothing short of an adequate remedy for the recovery of fugitive slaves, and forbearance on the part of the non-slaveholding States, can, in my humble judgment, restore peace and quiet to this country. Prompt action—fair, open, deliberate, yet prompt action—in the restoration of fugitives from labor, and a strict observance of their constitutional duties by the non-slaveholding States, will do it. Can a tribunal be instituted that will give confidence, in which the people of the free States, as well as those of the slave States, shall have confidence? It seems to me to be practicable. I do not invoke the agency of postmasters, collectors, and every petty officer belonging to the Government of the United States. I am inclined to think, sir, that the employment of these officers who, from the nature of the duties which they are ordinarily called upon to discharge, are unfitted for the exercise of judicial functions, would subject the tribunal to those animadversions justly applied the other day by the Senator from New Jersey, [Mr. DAYTON;] but I can see no objection to the appointment of commissioners in the several counties of a State. Let the federal courts appoint these commissioners, and let them be selected among gentlemen of character, of known integrity and firmness, and everybody will have confidence in their action upon all cases which may be brought before them.

Now, I think my friend from Connecticut has taxed his sympathies and alarmed his apprehensions with mere phantoms. What is the evil which he apprehends, and what is the remedy to prevent the evil? The apprehension is, that a free negro in Connecticut, or some other free State, may be seized by a Kentuckian, or some one from a southern State, and falsely claimed as a slave, in order to remove and sell him in a slave market, where it may be impossible for him to establish his right to freedom. Now it seems to me, that the evil anticipated is very remote; and although the gentleman has alluded to such attempts having been made, his well-known candor compels him to admit, that he never knew one of them to succeed. There are obvious reasons, which must ever prevent the success of a scheme so base and fraudulent. In the first place, the owner of the fugitive slave may be required to make affidavit that he has lost a slave. Then, before the evil apprehended can occur, perjury must be committed. Now, can gentlemen suppose that a Kentuckian, or any citizen of a slave State, will go and deliberately commit perjury, in the first instance, for the chance, not the success—not the absolute certainty of putting some few hundred dollars into his pocket, by converting a free colored person into a slave—but for the mere chance of success?

A SENATOR. I have known it done.

Mr. UNDERWOOD. Well, if you have known it done, I hope it was not a Kentuckian who did it. But I ask, is it a probable case, that any individual will commit perjury in the first instance for the prospect of making a free negro in a free State a slave? It is most improbable. It is said such things have been attempted; but no one pretends to give us a case where the attempt succeeded; and, as the law now stands, under the act of 1793, an affidavit of the loss of a slave is not required. With this precautionary requirement, which I propose, all apprehensions of danger to the free black population of the North must cease. No one will incur the guilt of perjury for a mere chance—a most discouraging prospect, because it has never yet succeeded—of kidnapping the free blacks of the non-slaveholding States with the design of selling them as slaves. Let this affidavit be made before the commissioner in the free State where the arrest of the fugitive is to be made; let the affiant commit perjury in that jurisdiction, if the statements in his affidavit are not true; and I will venture to assert, the veriest thief that ever disgraced his nature, unless he were as reckless of consequences as he was destitute of honesty, would not take the false oath and incur the guilt and the probable punishment. There would be no motive sufficiently strong to induce the commission of the crime. If, then, such a fraudulent and infamous design has never yet succeeded, under the laws as they now stand, why should my friend from Connecticut, when we are willing to protect the free black population by additional safeguards, alarm himself with the idea that kidnapping may hereafter be perpetrated with success? It is too remote, too improbable that such a case can arise, to make it our duty to vest the tribunal established to decide fugitive slave cases with power to determine finally the question of freedom or slavery.

But, sir, after the arrest takes place, will not the commissioner call before him as witnesses the neighbors, the acquaintances, and the friends of the party arrested? Are the "sympathies" of the North so dead that no one will rise up in behalf of humanity and bring the witnesses who have resided immediately in the neighborhood, and who can truly testify whether the person arrested as a fugitive was born free, and how long domiciled in the vicinity? Sir, if we may judge from the professions of northern philanthropy, if we may judge from the petitions submitted to this body, there can be no lack of energy, there can be no lack of humanity, there can be no lack of anything necessary for bringing forward the witnesses in the neighborhood for the purpose of having a full investigation as to whether the individual arrested is a fugitive from labor or not. Can gentlemen really apprehend that there will be such deadness, such want of feeling among their own population at the North, that they will suffer a colored man known to be free, a man raised from his infancy in the northern States as free, to be arrested and carried off as a fugitive from labor, when the whole country can rise up and testify in his behalf? If indeed such should be the lethargy of northern action, then are their high professions of devotion to human liberty nothing more than sounding brass and a tinkling cymbal. Are we to be alarmed and hindered in passing a proper bill by such groundless apprehensions as seem to be entertained? I hope not.

Allow me now, sir, to call your attention to a few other matters, which my friend in this connection urged upon the consideration of the Senate. He made a remark or two which I am sure, upon reflection, he would be disposed to modify, if not to take back. I understood him, in his complaints of the southern laws, to intimate that justice could not be done to the colored race when apprehended and sent by the tribunal, such as I propose to establish, to the State whence they fled.

Mr. BALDWIN. The gentleman is mistaken in supposing that I indicated any distrust of the integrity of the judicial tribunals of the southern States. What I intended to say, and believe I did say, was, that a free negro who had been sold as a slave, under the laws of South Carolina or any similar laws of other States, and had succeeded in effecting his escape, would not, if he should be sent back to these States as a fugitive, be likely to obtain deliverance from those who were appointed to administer the very laws under which he had been sold into slavery.

Mr. UNDERWOOD. I had not intended to make many remarks on that subject, and I will now, after my friend's explanation, content myself with saying that, having been a long time conversant with the judicial tribunals of my own State, I have never known a case of freedom or slavery where the leanings and sympathies of the judges and jurors were not in favor of liberty. It is one of the maxims of the law, always enforced by the courts of Kentucky, that if there be any doubt, the person claiming his freedom is entitled to the benefit of it. And the increase in the number of free negroes, under the judicial decisions of Kentucky, is an ample refutation of any insinuation that might be made of a want of humanity or proper sympathy in the administration of justice with reference to the colored race. But my friend, not content with what I thought to be an imputation on the South generally, certainly arraigned the legislation of the southern States to a very great extent, and particularly the legislation of South Carolina. Sir, I am not the advocate of that State, when there are others here so much more able than myself to do justice to any defence to which she is entitled; but I desire to submit a few remarks, in the hope that, if northern minds will but give their attention to the subject, they may be rather disposed to harmonize the jarring elements, than still further to increase the agitation that prevails. The difficulty with my friend from Connecticut grows out of the citizenship which he claims for the negro race under the Constitution of the United States, and the legislation and constitutions of many States of the Union.

Sir, originally negroes were not citizens in this country. The judicial tribunals of my State have settled that point for ourselves, and as to how far the judicial tribunals of other States may have gone I have not made a particular investigation. Indeed, I am now speaking more under the impulse of the moment than from any preparation. I repeat, negroes originally were not citizens in this country. During our colonial days, when they were brought here under British regulations, they came, not as citizens, but as property. Now, when this idea of negro citizenship commenced in the different States of the Union I am not prepared to state. So far as negroes are citizens of a State depends on the statutory or constitutional legislation of the States. I have not examined the matter with a view to ascertain the times when some of the States may have made the negroes, or a portion of them within their limits, citizens; but certain it is they were not citizens in the beginning. As they were not citizens in the beginning, it becomes the duty of those who assert that they are now citizens within the meaning of the Constitution of the United States to all intents and purposes, to show how and when the Federal Constitution and the constitutions of the several States attached to them so as to make them such. This has not yet been satisfactorily done by any member on this floor. I deny that negroes were regarded in the light of citizens by the States at the time the Constitution of the United States was formed, and I deny that the interpretation of that instrument is to be varied according to the changing subsequent legislation of the States. My friend refers to the articles of confederation to sustain his position on this point. Sir, there are two clauses in those articles which seem to have some relation to this matter. When these articles were framed the very object our ancestors had, above all others, was the successful prosecution of the war in which we were then engaged against Great Britain, and the 5th section of the 9th article of these articles of confederation expressly declares that the army shall be raised by requisitions upon the States, based upon what? citizenship embracing negroes and those not negroes? No, sir, but based on the "white inhabitants." There is the rule in the articles of confederation. The States were to contribute soldiers in forming the army of the Revolution in proportion to the number of *white inhabitants* in each State. Now, if the 1st section of the 4th article of the confederation is to receive the interpretation which my friend has put upon it; if

it is to make the free negro population in the country in 1778 citizens to all intents and purposes, in the name of common sense I ask, why, when they were providing for the raising of an army, the most important matter which could occupy their attention, why did they make the *white inhabitants* the basis, instead of citizens, embracing free negroes and all?

I will now for a moment refer to this first section of the fourth article upon which my friend rests his argument to justify this wholesale denunciation of the southern States and their legislation:

"The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively: provided, that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided, also, that no imposition, duties, or restriction, shall be laid by any State on the property of the United States, or either of them."

Now, sir, a free negro of Connecticut, under these articles of confederation, going into the States of North or South Carolina, will be subject, in the very language of the section, to the "impositions and restrictions" imposed by State legislation upon the inhabitants of those States. In other words, under this clause of the fourth article of confederation, a free negro from one of the northern States going into a southern State would be placed in no better condition than that of the free negroes in the State to which he might go. If those States have severe patrol regulations, it is their legitimate right to adopt whatever rules their safety under existing circumstances may require. And I ask the gentleman whether the regulations of which he complains are anything more than severe patrol regulations? I do not say they may not be too severe, but I think they do not deserve the unqualified condemnation which my friend has thought proper to bestow on them. What do they spring from? The principle of self-preservation is their foundation, and their object is to secure the people, endangered by the introduction of a class who, from sympathy with the slave, may be disposed to excite him to insurrection. We all know that caste and its attendant sympathies have always and will ever induce individuals of the same color, the same nation, and the same condition in life to associate with and give to each other aid and assistance. Hence it is that the South feels danger from the introduction of free negroes from the North, imbued with extreme abolition ideas. The South, therefore, by precautionary legislation, guards against, not only possible, but probable dangers. This is nothing more than patrol or sanitary legislation. Why, sir, what is the practice of every civilized community in regard to quarantine laws? What is the practice of the commercial people of the North? Why, sir, you actually take away a man's liberty from him, merely on the ground of apprehension that he may introduce an infectious disease! You quarantine a man for forty days, and make him a *slave* for that length of time. You do not put him to hard labor, it is true, but you take away his liberty. What is this, but an exemplification of the principle that every society has the right of protecting and taking care of itself, and must judge for itself as to the appropriate means. Yet we hear not a word of complaint about the deprivation of a man's liberty through these quarantine laws; but when the South takes away a negro's liberty for a brief period, with a view to the prevention of results the most awful which can be imagined, and which need not be named, it is here denounced as a most terrible outrage and crime! Sir, it is but the exercise of one of those patrol regulations of society, absolutely essential to its protection and existence. Gentlemen should be more liberal in their views. They ought to look at the great operations of society, and the existence of those causes, growing out of the very nature and structure of man, which justify communities in the adoption of suitable regulations for their protection and preservation. Gentlemen may talk as they please about it, but no society ever did, ever can, or ever will exist without exercising this power in all cases where their self-preservation is at stake. They may go too far and abuse the power, but its exercise is an indispensable right belonging to human government.

But are these patrol laws confined in their operations solely against negroes? Not at all. What is done in this city, and in every city in America, and all over the world? Let a person present himself in a suspicious attitude at night, and the watch will arrest him and take him to the calaboose, or common jail, and keep him there until the matter is investigated. If the circumstances are at all suspicious, you may require of him bond and security for his good behavior; and if he does not comply, you may commit him to jail for twenty, thirty, or sixty days, or for years, as the wisdom of the legislative power of the country shall direct. Thus it is in regard to mere suspicious persons; but how is it in reference to free white vagrants? You arrest them, investigate their conduct, and in some of the States actually sell them into slavery, and whip them like negroes when they disobey their masters. These are regulations which exist to some extent everywhere; and yet from the speeches delivered on this floor, a stranger from another planet would be induced to think that all the inhuman oppression, all the grinding despotism in this world is inflicted by the white race upon the black. Sir, it is not so. If you will only consult the statute books, you will find that everywhere society has made such regulations to operate upon individuals and classes of individuals as the general welfare seemed to require.

My friend complains that the feelings of the North are greatly harassed by the existence of the slave trade in this District, and declares that inasmuch as Congress has failed to regard the petitions of the people of the District, that therefore the citizens of the distant States have a right to petition, and to call upon us to put a stop to those scenes of outrage and inhumanity which prevail in the precincts of the Capitol.

Now, I have been a member of Congress, first and last, for about fifteen years, and during all that time—although I believe I associate as much with the slaveholding population of this District as most members, having a good many connections here—I aver it before the Senate and the world, that I never witnessed a bargain here which involved

the sale of a slave, nor have I ever seen one put in jail. I never saw a slave here in custody, except a part of those whom some abolitionists attempted to take off in a vessel, and who were caught and brought back again. If this traffic in human beings be so great an outrage to the feelings of members who represent the North, I do not know how it has been their fortune to come more frequently in contact with it than I have. Can it be that gentlemen run about in search of these spectacles which give them so much horror? I have heard, to be sure, that there are some pens, as they are called, some prison-houses on the Island, where slaves are confined, but I have never gone there to see who was in or out of them, or how they were kept. And really, sir, it seems to me that no one of proper feeling would be disposed to look upon the scenes we may imagine to exist at such places, unless it was his duty to do it. So far as our legislative functions are concerned, we may just as safely rely on our ears as our eyes. We have heard that slaves are brought here from the surrounding States for sale. I am willing to listen to the petition of the people of the District, and to arrest this traffic whenever they desire it. But will that arrest the trade in slaves? Will it be anything more than a change of the market from Washington to Alexandria? Why should a sensible and benevolent man mourn over the slave trade on the north bank of the Potomac more than on the south? Why should he go into *hysterics* about the place where the trade is carried on when that is a mere circumstance which neither increases nor diminishes the number of slaves, and does not and cannot either alleviate or aggravate the miseries of slavery? Sir, I have no patience with the littleness and narrowness of those homilies founded on the District of Columbia for a text. If the stupendous evils of American slavery are ever, in the providence of God, to be redressed and obliterated, it will be accomplished through the agency of men who possess intellectual capacity to adapt and apply their machinery to the whole continent. To make any scheme effectual, it must be a scheme of moral suasion alone.

Judging from our debates, our proper business consists in getting up a torrent of feeling and pouring out our grief over the calamities which we daily meet in the journey of life—especially, if the sufferers are doomed to wear a black skin. The philanthropist must have an immense fountain of tears to pay a lachrymal tribute to everybody's sorrow. But, notwithstanding all the deep expressions of sympathy for the oppressed African, were I required to select the gentlemen in the Senate of most cheerful temperament and joyous hiliarity, I should take them from those who, so far as words are concerned, grieve most over the condition of slaves. Not long ago I saw in print that a man in New England was to be hung for murdering his own wife and children. It was a heart-rending crime, and no doubt he justly deserved the punishment. You can scarcely open a newspaper without meeting with an account of some horrible transaction which has occurred in some part of our wide-spread country, or of the world. Sir, these things are incident to our condition on earth, and to our fallen nature, and they cannot be prevented until that blessed period shall arrive when the hearts of all are to be regenerated. In the present condition of things, as evils do and will exist, it is worse than useless for gentlemen to be continually bringing up the evils of slavery for animadversion, condemnation, and censure.

Mr. HALE. The evils of slavery exist by force of law, while those to which you refer exist without being upheld and sustained by law. That is the difference.

Mr. UNDERWOOD. I will consider that subject briefly, though I had not intended to go into it at this time. The Senator says that the evils of slavery, of which he and others complain, exist by force of law. Now, sir, did not the relation of parent and child, of husband and wife, in the case to which I have already alluded, where the father murdered the mother and children, exist by force of law? What was it that gave the husband and father power over the wife and children at the time he murdered them? What brought them together? The force of law. What established the relation between the parties? The force of law. What gave the husband power over the wife? The force of law. How does the master exercise power over the slave? By the force of law. But where is the difference in these cases? Simply here, and nowhere else. In the relations of husband and wife, of parent and child, of guardian and ward, and of master and apprentice, there may be a higher degree of sympathy, a stronger affection, ties of a more tender and elevated character, which generally operate to produce milder and kindlier treatment than subsist in the case of master and slave. I concede all that, but the legal relation is the thing I wish considered. Whence does the father derive the right to govern and control the wife, the child, the ward, the apprentice? It is from the law, the municipal, the civil law, and not the law of nature. The law of nature may give the mother a right to rule and govern the infant, but the father derives his right from the law of society. The marriage relation is based upon, and grows out of, a civil contract regulated by human laws. So far, therefore, as the relations of father and child, master and slave, exist in reference to law, they are identical. Let me go further. The white child is legally just as much the slave as the black negro—just as much—and it can be proved to a demonstration. What is slavery? It is the right by law to control the will of another, and to appropriate his services to your use and benefit. If that is not slavery, I do not know what it is. What is the ownership of a horse? It is the right to control his will, and to make him labor for your use and benefit. It is that right which constitutes the horse your property, your slave. What is the foundation on which to place the right of the father to control the will of the child until it is twenty-one years old?

A SENATOR. The law of nature.

Mr. UNDERWOOD. No, sir. The law of nature may give the mother a right to control and take care of the child until he is able to provide for and take care of himself. But it is entirely a regulation of human society that gives either parent the right to control the will and appropriate the labor of the child until he reaches the age of twenty-one. Nor does the age of twenty-one fix the period of minority in all countries. If it were a law of nature, it would be the same everywhere. The Romans, I believe, continued the authority of the parent over the child during the life of the

parent, and gave the master the power of life and death over his slave.

My proposition is to prove to the Senator from New Hampshire [Mr. HALE] that the condition of the child in reference to servitude is identical with that of the slave, except so far as it is modified and ameliorated by the different degrees of affection and interest. I admit that our warm sympathies and love for our children operate so as to produce a treatment and conduct towards them very different from that usually observed towards slaves; but taking the proposition in a legal point of view, and my position cannot be disputed. The father has full control over the child's will, and the right to apply flagellation and punishment for disobedience until he is twenty-one years of age. The child is not generally subjected to severe discipline because of the affections to which I have referred; and, from the motives founded in filial attachment and reverence, the child is more likely to obey with cheerfulness and alacrity. But I will not dwell longer on this point. The right of the father to control the child and to appropriate his labor during minority—a minority which, at the option of the Legislature, may be continued long after the faculties of the child, both physical and mental, enable him to provide for himself—is derived from municipal or civil law. The master's right over his slave has precisely the same foundation to stand on. But suppose I concede, according to the suggestion, that the relation of parent and child is founded on the law of nature, can it be contended that the relations of guardian and ward, master and apprentice, are likewise based upon the law of nature? Certainly not. In the case of the apprentice, then, we have a clear case where the institutions of man create involuntary servitude, and give the master the right to control the will and appropriate the labor of his servant, and to flog him for disobedience. This species of slavery, limited in its duration in respect to those who are bound by it, is tolerated in every civilized community. But it only differs from African slavery in degree. The apprentice has no volition in entering into the relation. Submission and obedience to the will of a master become his duty, for the violation of which corporal punishment is the penalty. This relation is subject to many and great abuses, and I have heard of inhumanity and cruelty towards apprentices not less revolting than the infuriated brutality sometimes practised on slaves.

Now, sir, the northern mind, it seems to me, overlooks the many other relations of life, having their origin in the laws which regulate human society, and seizes hold of the institution of slavery in the southern States, for the purpose of vituperation and abuse, as if it were the fountain of all earthly evil. I invite a deep scrutiny into the essence of things. Let us not be led away into a gust of passion by words and sounds which communicate no definite ideas. Let us take a broad and expansive view of human institutions, and I am persuaded that we shall find involuntary servitude to exist by force of law in many other relations of life than that of African slavery, and where it cannot be justified as a punishment for crime. It exists in many cases, and if we would but survey the whole, we should be more tolerant, less spiteful, and equally anxious, as philanthropists, Christians, and patriots, to mitigate where we cannot extirpate. Among the fanatical dogmas of the day is that which asserts that man cannot have a property in his fellow-man. If a right of property consists in a right to appropriate to our use the labor of another, and to control the will of the laborer, it follows from what I have already stated that the parent has a property in his child, and that the master has a property in his apprentice, just as the owner has a property in a horse. What constitutes a right of property in anything, animate or inanimate, but the power sanctioned by law, to use the thing or the person according to our will and pleasure, and for purposes of our ease and comfort? If such power, under law, confers a right of property—and surely it must, if anything can—then I cannot perceive why man may not have property in his fellow-man, just as well as in the brutes of the field or the growing corn. With those who deny that human laws are sufficient to create rights of property in man, I will enter into no disputation. I proceed upon the basis that there is such a thing as a legal right, in violation of or contrary to natural right; and that legal rights, having their foundation in the powers of Government, must prevail over natural rights, so long as society through its organized tribunals enforces its laws. Indeed, sir, all human government is but an infringement on, and curtailment of, natural rights and privileges. In the social state under governments, man's natural right of self-redress is taken from him almost entirely. Sir, I have but little respect for those who set up their code of natural rights, or what they are sometimes pleased to call the *laws of God*, as paramount to the laws of society. In the first place, it should be presumed that governments will not make laws violating the laws of God. In the next place, we should, especially in a republic, presume that, if such laws are inconsiderately made, an appeal to the public reason and morals would result in their speedy repeal. And in the last place, if such repeal cannot be had, the presumption is, the law complained of is not unjust. At all events, it is generally combined arrogance and folly for a minority to denounce the legislation of the majority, and to threaten resistance and defiance in consequence of and alleged conflict with the laws of God. Indeed, sir, I believe that submission to the laws of our country, although we may not approve them, is a Christian duty. The right of rebellion only attaches to extreme cases.

The laws which create a property in, or, what is the same thing, a right to the services of the apprentice, or the hireling, or the child, or even the wife, are so universally and so practically understood and acted upon, that it must be useless to illustrate, by putting many cases. The father may hire out his son by the day, month, or year. To entice away and harbor an apprentice, subjects the offender to the action of the master for damages. The father can only recover for the seduction of his daughter, upon the averment that she was his servant, and, as such, that the seducer had injured his rights of property in the services of the child.

Sir, I dismiss the dogma to which I have called the attention of the Senate, and only regret the time lost in noticing it. The world is full of evidence to prove its falsity.

The gentleman admitted that there was such a

thing as voluntary servitude. That concession surrenders the whole question. If a person by contract can become my servant, bind himself to obey me, and surrender his will to mine, and the law enforces such a contract, then I have a property in the man, in his services. They belong to me under the contract. It is just as well to call things by plain terms, and to look at them in the light of common sense, as to indulge in that sublimated philosophy whose chief excellence consists in antipathies to names and phrases associated with revolting ideas. The term *slave* is odious and revolting. It excites feelings and passions incompatible with a clear perception of truth. What are your honored soldiers and sailors? They are the veriest slaves that ever walked the earth or floated on the sea. Their slavery is of that character that you shoot them for disobedience. The flagellation of a negro for desertion is mercy in comparison to the treatment of your soldier for such an offence. You flog the sailors for disobedience. I will do the gentleman from New Hampshire [Mr. HALE] the justice to say, that his course here has indicated as much horror at the use of the *cat-o'-nine-tails* in the navy as he usually manifests towards the institution of African slavery. Now, sir, let any one who wishes to take a look at slavery double-refined, inspect the armies and navies of civilized nations, not overlooking our own. There you shall see a slavery which subjects the slave to the punishment of death for disobedience to the will of his master. But, ah! that is voluntary servitude; the man contracted of his own will to perform the service, and to subject himself to the punishment of death for disobedience. You have no compassion, then, for the voluntary slave. If I had time I would refer to various regulations and systems of government which exist on earth, to show you that seocity places myriads of human beings in that condition where they are compelled, as a matter of necessity, to contract voluntary servitude, or to starve or steal? These are the sad alternatives that are often presented to the poor and lowly born. Now, sir, my heart feels as much for the man who is a voluntary slave, driven to it by a grinding necessity, as it does for the man born and raised as a slave.

But, sir, we are not without examples of the strongest cases of involuntary servitude—sometimes forced upon its victims by law, and sometimes without law—in the conduct of some nations which turn up their noses when the institution of slavery, as it exists among us, is mentioned. What were the conscriptions of France in the reign of Napoleon? Was there ever a more perfect system of slavery than that? Look at the pressgangs of England, which seize men and make them fight the battles of that country. Yes, sir, until the war of 1812, they even invaded our ships and impressed American citizens, and made them slaves. There is involuntary servitude for you, forced upon its victims without law! I admit that our sympathies in behalf of our own seamen forced us into a war with Great Britain, and I rejoice at it.

I will give you another and a domestic case. How is it with the draughted soldier? In times of war generally, in this glorious country of ours, we have but to raise the flag and beat the drum, and ten volunteers will be found where one is wanted. But under the laws, if they did not turn out voluntarily, you could draught them, make them go, and shoot them if they deserted. There is more involuntary servitude for you, but in this case authorized and sanctioned by law.

I have thus briefly endeavored to show that man may have a property in man, and that there is such a thing, properly and justly instituted by law, as involuntary servitude without intending it to be a punishment for crime. The position of minors and apprentices, and the condition of soldiers and sailors, gilded though it may be by all the glittering paraphernalia of war, and ameliorated by all the sentiments of heroism and patriotism, fully establish the positions I have assumed. It would seem, from the horror so often expressed when involuntary servitude is the theme of discussion, that some gentlemen are of opinion that unrestricted freedom in all things, by all men—aye, and by all women and children too—is the only condition compatible with the dignity of our race, and in which happiness is to be found. I go for restricting the "largest liberty," by such regulations as the safety and welfare of the community require. Sir, civil government, civilization itself, is nothing but a combination of restrictive cords to bind the wild, the erring, and aggressive will and freedom of fallen man. When he was pure and perfect, his Creator prescribed a law to bind him in Eden. "In the day thou eatest thereof thou shalt surely die" was its penalty. If sinless man needed restraint upon his will, how much more do the wicked require it! In the nature of things, human society must judge of the extent of these restraints and laws. We refuse the right of suffrage to women, and exclude them from legislative and judicial stations. But, sir, it must be useless to enumerate restrictions imposed upon certain classes from which others are exempt. We require minors to perform military service at eighteen, and refuse them the right to vote until they reach twenty-one. In all such regulations, however variant and diversified, we see the power of social organization exercising itself for the general good. The institution of African slavery and its continuance are questions which human legislation must dispose of according to the requirements of the public reason and judgment. It belongs to the people alone where slavery exists to settle these questions for themselves, and it is a most unjustifiable intrusion for the people of States where it does not exist to intermeddle.

Mr. U. here gave way for a motion to adjourn.

THURSDAY, *April* 4, 1850.

The same subject being under consideration—

Mr. UNDERWOOD resumed his speech. Mr. President, (said he,) on yesterday afternoon I had presented a variety of cases proving that negro slavery was not the only instance upon the face of the earth of involuntary servitude created and tolerated by law. I had presented also a number of cases to show that voluntary servitude, in many particulars, was as abhorrent to the feelings of our nature, and deserving commisseration as much, as involuntary servitude. My object in so doing was to convince every one, that if we regarded the evils which afflict mankind, our sympathies would be enlarged, and that the true philanthropist would be disposed to adopt remedies for the whole, rather than to seize on any one particular evil, and make

the especial object of a crusade, in exclusion of all the rest. For myself, I hope that my heart is imbued with a spirit of philanthropy sufficiently comprehensive to extend to all the complicated evils with which human nature is or can be oppressed, not only at home, but in every clime and in every land; and, as far as I can properly exercise any influence, it shall be given to the cause of humanity, freedom, and civilization throughout the world.

The northern mind, in selecting the institution of slavery as the particular object against which its crusade of philanthropy is directed, instead of securing any good or beneficial result, has produced only evil, and that continually. I think I may speak upon this subject with considerable personal knowledge as to the effect of this agitation upon men and upon communities. I know that in reference to my own State this interference from abroad has had the worst possible effect. Its direct tendency has been to prostrate those who have been disposed to ameliorate the condition of the black race, and ultimately to adopt measures of final emancipation. Sir, this is but a most natural result. This northern war of agitation against the particular institution of slavery, which seems to overlook all the other ills flesh is heir to, has excited a counter spirit on the part of those who hold slaves, who live among them, and who are familiar with all the operations of the system of slavery. A counter excitement has grown up at the South, which, as in all differences of opinion affecting the pecuniary interests of the parties, or one of them, carries men into extremes. The effect of it has been, as was mentioned on this floor by the Senator from South Carolina, now no more, to divide one of the most influential churches in the country—to separate the Methodist Episcopal Church into "North" and "South." Another effect of this war between the two sections has been to induce many at the South to place the institution of slavery upon Scriptural grounds, relying that it was of Divine origin, and justifying the introduction of slaves, even at this day, from Africa. At present those who denounce the laws prohibiting the African slave trade and making it piracy are few in number, but they will increase with the excitement. Why, sir, there is no war of opinion on any subject, I care not what it is, that may not bring men into such hot collision that they will drive each other into irrational extremes and fatal errors. In Kentucky, from the days of the Convention which framed our first Constitution down to the present, from the days of the Rev. David Rice, the first Presbyterian minister who trod the soil of the "dark and bloody ground," and who led the emancipation party in our first Convention, we have had men devoted to the adoption of a system of gradual emancipation. The influence of all such men has been in a great degree prostrated by the abolition agitation which has sprung up at the North. Their practical and benevolent plans of uniting emancipation and colonization have been defeated by identifying them with northern ultraism and fanaticism. In the recent constitutional convention of Kentucky, although we had many candidates in favor of gradual emancipation and colonization, not a single emancipationist was returned. Such is the effect of this war of agitation. I have seen acknowledged that the course of the North and of extreme abolition doctrines have apparently had a prejudicial effect, and tended to defeat its own purposes at the South; but it was at the same time said that such effects were to be expected in the first instance; that it was like pulling down fences, destroying orchards, interfering with the long-settled and familiar arrangements of farms, and making deep cuts and large fills with a view to construct a railroad. The incipient stages and progress of the work produce much inconvenience, grumbling, and bad feeling, all which are in the end to be supplanted by conveniences, gratulations, and hilarity. I admit the beauty of the comparison, and if the simile could be realized the foreseeing philanthropist might rejoice in the midst of the prevailing uproar and hate. But I do not see that the first spade of dirt has been moved to make the grade and foundation of the great moral railroad. On the contrary, the people of the South have said to the North, you shall not move a grain of sand upon our territory nor touch a twig for any such purpose as you avow. Sir, it is a vain hope that the moral steam car will ever run through southern territory upon a track constructed by northern minds. All interference from abroad upon such a subject is offensive and repulsive. It is a delusion on the part of northern men, if they expect anything like reform to proceed from their acrimonious denunciations of slavery. The progress of the world is not to be accomplished by vituperative assaults upon the old and long-sustained institutions of civilized societies. Foreign interference will never emancipate southern slaves. The work must be left to domestic agitation alone. You must leave it to those who experience and clearly comprehend the effects of the institution among themselves. And if the northern men cannot leave it there, I tell them their efforts are only riveting the chains of slavery faster and faster. Sir, we already experience this truth in Kentucky. Northern abolition has produced the adoption by the recent Convention of an amendment to the constitution of the State which prohibits emancipation altogether, unless the emancipated slave is removed from the State. Our former constitution tolerated and even encouraged it, and made it the duty of the Legislature to pass laws under which slaves could be emancipated. The recent Convention has prohibited it; and when the constitution they have framed shall be adopted, as it probably will be, emancipation is at an end in Kentucky. I tell the gentleman before me [Mr. HALE] that this is a part of the results which he and his associates in this war of agitation have porduced. Such are their laurels and their triumphs!

If we look at the origin of the institution of slavery as it exists in the United States, we find that it originated at a period of the world when the doctrine seemed to prevail among Christian and civilized nations, that savage countries when discovered might, without a violation of religion or morals, be seized, and their inhabitants, as well as the soil, appropriated as slaves to the use of civilized man. Are we of the slaveholding States now responsible for a state of things descending upon us as a consequence of the principles and practices of our ancestors in the early part of the seventeenth century? I said upon this floor on a former occasion that we were no more responsible for it, and had no more control over it, than we had in regard to the times and places of our birth. The gentleman who sits before me [Mr. HALE] has handed me a northern document attempting to place me in an unfavorable point of view for that

declaration. It shows the extent of the fanaticism occasionally operating on the minds of men, and which obliterates, or rather obscures, their perception even of the plainest truth. Now, the institution of slavery having originated in the way it did, the question with us, who have been born and raised with it, who are in no way responsible for its origin, is, what are we to do with it? And what are we told by the North? Why, sir, it is said that slavery is a sin—an individual sin; and that the only remedy for the evil, the only purgation for this individual sin, is immediate abolition. Were I disposed to concede that to hold slaves was a sin on the part of the master, I am not sure that he would not aggravate his guilt, and deserve a hotter punishment by taking the prescription of *immediate abolition*. The master who should turn loose uneducated, improvident slaves, who have never contemplated the responsibilities and duties incident to a state of freedom, and who would become a prey to sharpers, or be again reduced to slavery under the vagrant laws, deserves the same respect and treatment that the father should receive who abandons his own offspring in helpless infancy, before they are able to take care of themselves. Admitting that it is just and proper to get clear of slavery, I deny that there is any obligation binding us to do it "*immediately*." Shall the lost wanderer in the wilderness jump headlong down the precipice to regain *immediately* the path at its base from which he strayed? Shall the army which finds itself on the wrong side of a booming river, rush headlong in to it to gain *immediately* the opposite bank? In these cases do no sound morals, as well as prudence, allow some little delay? May not the traveler hunt for a slope to descend the precipice, and may not the army take time to build boats or a bridge? Sir, the idea of immediate abolition is about as wise and moral as would be the prescription of a quack who should direct a person overheated by severe exercise to cool himself *immediately* with large quantities of ice, or who should undertake to thaw a frozen limb by immediate immersion into the red-hot lava of an iron foundry. But is it an individual sin to hold or own a slave? What is the condition, sir, of the infant who inherits a slave by the death of its parent? The property is vested in the child by the operation of laws. The child is a minor, and cannot act in the execution of deeds of emancipation. I ask if it is an individual sin in that case, on the part of the owner of slaves thus situated? Sir, to put the question, and to state the case, is enough. Common sense and common honesty give the answer that it is no sin in the infant thus to own a slave. The person thus situated is in no respect whatever responsible for the condition in which he is placed. He had no agency in bringing it about, and cannot, until the period of his maturity arrives, execute a deed of emancipation. Is it an individual sin even then? I deny it. I insist that the condition of the slaves in most, if not in every one, of the slaveholding States, at this time, is better than it would be, if entirely free from the restraints of their masters. I speak from experience; I know the fate, the wretched fate, which has attended scores of emancipated slaves turned loose in a society where it is impossible to confer upon them social equality, and where to grant them political equality would be madness. But I have not time to explain the evil consequences of emancipation, if the two races are permitted to remain together. To preserve society in peace and harmony when the two races are nearly equal in number, when both have equal privileges, and when the sympathies and antipathies of caste would inevitably operate, could not be done. Is it an individual sin in the slaveholder that he will not risk the fearful consequences? But suppose the law will not allow the slaveholder to emancipate even when he wishes to do it? What, then, is he still guilty of sin? Suppose I treat my slaves with cruelty and inhumanity, and my neighbor, actuated by compassion and benevolence for the suffering slave, chooses to purchase him with a view to his emancipation as soon as his labor has remunerated the expenditure, is it an individual sin? Does such a purchaser, with such motives, deserve damnation for dealing in human flesh? But, sir, I will cease to put such questions. The heart of all upright men instantly furnishes the proper answer. The citizen may hold and purchase slaves without committing sin. But I will tell you what I think the citizen ought to do: He should look at slavery as an institution in all its bearings, social, moral, and political; and if on investigation he is convinced that it is an evil, then he should, to the extent of his influence, in a calm, yet firm manner, endeavor to persuade his fellow-citizens that the laws which tolerate it ought to be changed—that it is the sin of the State, if you please so to call it, but no individual sin. My opinions, in regard to slavery as an institution of the State in which I live, have been published more than twenty years. I look upon it as an evil, a great evil; but in my judgment there is no remedy to better the condition of both the black and the white race, but their entire separation.

Sir, there are thousands who think with me on this subject in Kentucky, and who will go for the separation of the races on any practical scheme that may be presented, but who will never consent to the amalgamation of the races by permitting the blacks to remain where they are, and by conferring upon them civil, social, and political equality. I have already said that I have not time to go into the consequences which would grow out of the immediate emancipation of the black race, conferring upon them where, as in some States, they are more numerous than the white, equal social and political privileges. But I will say here that the consummation of a scheme of that sort at the South, under the present state of the southern mind, is an impossibility. It cannot be accomplished, and the only thing which presents to my mind the least prospect of ameliorating, by freedom, the condition of the slave, is the ultimate separation of the two races by colonization.

Well, sir, does the northern mind and feeling take hold of that idea, or in any way contribute to it? No, sir. On the contrary, not a word has been heard in the debate here, or in the other branch of Congress, except the suggestion of the Senator from Massachusetts, [Mr. WEBSTER,] that any aid or sanction should be given to colonization through the instrumentality of the General Government, or by the nation at large. The Senator from Massachusetts alone has ventured to sanction such a project, and how is his great speech received by the North? I lament to say that, from various indications through the public papers which I have seen, the northern mind has even repudiated him in consequence of the liberal doctrines advanced in

his recent speech. I regret that it is so, and to know it. Sir, let me tell you what occurred during the last Congress. I then had the honor of presenting a petition from a gentleman of Bourbon county, Kentucky, Mr. Bedinger, asking the interference of the Government on this particular subject, and requesting Congress to do what the Senator from Massachusetts has intimated he would be willing to do. I presented the petition, and asked its reference to the Judiciary Committee, with instructions to inquire into the power of Congress to make appropriations to relieve the country from free negroes, and those emancipated for the purpose of removal. In making the motion I expressed the hope that the Judiciary Committee would turn its attention to the fact, that various appropriations had been made for the removal of the Indian tribes, for returning to Africa her children recaptured on the high seas from slavers and pirates, and for other similar objects; and I requested that that committee would explore the rights and powers of this Government, and then explain, if there was a difference, how and why Congress could appropriate money for the removal of Indians, yet could not for the removal of free negroes? The effort made to obtain a reference of that petition failed. Yes, sir, I failed to get Congress even to consider the question of colonization alluded to by the Senator from Massachusetts in terms so grateful to my ears. Thus you perceive the *northern mind*, by its representatives on this floor, refused, even upon a *petition*, to take hold of or consider this subject. Now, sir, my remedy, and the remedy of my constituents, so far as they have ever proposed one, is colonization; and when it is brought to your notice by the petition of a most estimable gentleman, you refuse to consider it, much less to give us your aid and assistance. Under such circumstances you ought not to be surprised that we turn a deaf ear to the cry "Abolition! immediate abolition!"

Sir, we have invested in this description of property to the value of at least $1,000,000,000. The tax-list of my own State, which owns about the one-fifteenth portion of the slave population of the country, shows a value exceeding $62,000,000. At the same rate the total valuation of the slave property of the country exceeds $1,000,000,000. In this kind of property the southern citizen, under the sanction of his own State, may invest his capital. And what do northern men ask of us? Do you expect the cry for immediate abolition will give anything like satisfaction to the individual who has thus invested his money? Will he tamely acquiesce in such a suggestion? Do the northern people expect to free the slaves, without to some extent following the example of France, of England, and even of Mexico, all of which nations, in their decrees of emancipation, provided for the compensation of slave owners, and some have actually paid it? Great Britain has expended $100,000,000 in making compensation to the slaveholders of the West Indies. Have you ever heard yet, in the progress and action of the northern mind, any intimation that this example, furnished by the mother country which introduced slavery here—or that the example of France, or of Mexico even, is to be followed in this country? No, sir; not the first suggestion of the kind. But the cry still is, "emancipate your slaves;" and no compensation from any quarter seems to be thought of or proposed. Shall we attempt to tax ourselves to pay for the slaves emancipated? Who are we to tax? Are we to tax slaveholders to pay slaveholders for their property? That would be no compensation. To tax my own property to pay myself is idle; it is taking money out of one pocket and putting it in the other, and then pronouncing the debt paid. Do you expect our non-slaveholding citizens will bear taxation to pay for emancipating slaves in which they have no interest? Certainly not. How, then, is this evil, conceding it to be an evil, to be remedied? Will northern men give us the national domain to pay for our slaves, and cease to upbraid us because we will not immediately emancipate them, regardless of consequences? Speak out, gentlemen. If you will not pay us the value of our slaves out of a common fund, will you go so far as to pay for their removal to Africa, if we will surrender them without money and without price? Be pleased to go into particulars, and give us something practical. Sir, I am tired and nauseated with calling upon us day after day, and year after year, to do a thing which, in every view I can take of it, is utterly impracticable without ruin to the South.

I repeat, there is but one plan by which the African race in this country can be materially improved. I speak of the aggregate, and not individuals. It is to transfer the race to their fatherland—to colonize them in Africa. I have so often proved that this can be done, that I shall not enter into any arguments to establish it now. I shall only remark that it is a work for many years, and that there are many causes imperceptibly operating to produce ultimately that desirable result. Among these causes, the improvement in the arts, new inventions in labor-saving machinery, and the rapid increase of our population, furnishing more abundant and cheaper labor, are among the most efficient. Under these and other causes Africa is destined to become, in reference to us, what we are to Europe—the asylum for the oppressed, who cannot rise under the weight imposed by the laws of the country which gave them birth.

Now, sir, if the North can only be persuaded to discontinue their charity of words, to give up their petitions for the abolition of slavery, which cost little and avail nothing, and show their faith by their works, in pouring out their treasure in aiding colonization, in extending Liberia, and fitting it more and more for the reception of the thousands of emigrants that are willing to go, but cannot under existing circumstances get there; then great results in behalf of the negro race will be accomplished, but not till then. I am happy to know that there are many northern men who take a proper view of this subject—who have already done much for colonization, and who will hereafter, I doubt not, do a great deal more.

But, sir, so long as slavery continues to exist, the question is, are we to execute the Constitution? Shall its provisions be carried out by the passage of a law for the reclamation and restoration of fugitive slaves, according to the intention of the instrument? That is a practical question. Is there any necessity for such a law? That there is such a necessity, I have the means of showing conclusively. The resolutions of the non-slaveholding States, calling upon Congress to abolish slavery in this District, to suppress the slave trade,

to exclude slavery from the Territories, and to prohibit the admission of slave States into the Union, fully demonstrate the hostility of the North to the institution of slavery. I hold in my hand, sir, such resolutions adopted by each non-slaveholding State, but I shall not consume time by reading them. I have another document, to which I beg leave to call the attention of the Senate. The case of Prigg *vs.* the State of Pennsylvania, decided by the Supreme Court, in January, 1842, gave rise to a new system of legislation in the northern States. Before the decision in that case, under the act of 1793, which authorized the magistracy under State appointment to adjudicate upon the question of the delivery of fugitive slaves, you had, in every neighborhood and in every county in each State, individuals vested with jurisdiction, who could grant the appropriate certificate for the removal of a fugitive slave to the State whence he fled. Under this system the individual who lost his slave had only to apply to the State magistrate to act in his behalf, and the slave was returned. But when the decision of the Supreme Court of the United States was pronounced, declaring that this was a subject exclusively belonging to Congress, these States commenced a new system of legislation, and, by way of a sample, sir, I will give you that of Massachusetts, Ohio, and Pennsylvania.

Mr. UNDERWOOD read as follows:

Massachusetts, by an act approved 24th March, 1843, enacted that "no judge and no justice of the peace shall hereafter take cognizance, or grant a certificate in cases that may arise under the third section of the act of Congress, passed 12th February, 1793, entitled 'An act respecting fugitives from justice, and persons escaping from the service of their masters.'" The second section provides that "no sheriff, deputy sheriff, coroner, constable, jailor, or other officer, shall hereafter arrest or detain, or aid in the arrest or detention, or imprisonment in jail or other building belonging to this Commonwealth, or to any county, city, or town thereof, of any person for the reason that he is claimed as a fugitive slave."

The third section imposes a fine not exceeding one thousand dollars, or imprisonment not exceeding one year in the county jail, upon any officer who shall offend against the provisions of this law, by acting directly or indirectly under the power conferred by the third section of said act of Congress.—*See Laws of Massachusetts, New Series.*

Pennsylvania, by an act passed 3d March, 1847. The officers, judges, and justices of the peace are prohibited from executing the act of Congress of 1793; and if any alderman or justice should attempt to do it, he is guilty of a misdemeanor, and on conviction thereof, he is to pay a fine not less than five hundred dollars, nor more than one thousand. The fourth section of the Pennsylvania act provides, that if the claimant of a fugitive slave shall violently and tumultuously seize upon and carry away to any place, or attempt to seize or carry away in a riotous, violent, tumultuous, and unreasonable manner, and so as to disturb and endanger the public peace, any negro or mulatto within this Commonwealth, either with or without the intention of taking such negro or mulatto before any district or circuit judge, "the person so offending, on conviction, shall pay a fine not less than one hundred dollars, nor more than one thousand dollars, and further, be confined at the discretion of the court in the county jail not exceeding three months." The sixth section of the Pennsylvania act declares that it shall not be lawful to use any jail or prison of the Commonwealth for the detention of a fugitive from servitude or labor; and any jailor who offends this law shall pay a fine of five hundred dollars, be removed from office, and rendered incapable of holding such office again during his natural life.

The seventh section repeals so much of the "act for the gradual abolition of slavery," passed 1st March, 1780, as authorizes masters or owners of slaves to bring and retain such slaves within this Commonwealth for the period of six months in involuntary servitude." And so much of said act of 1780 as prevents a slave from giving testimony against any person whatever, "is hereby repealed."—See *Laws of Pennsylvania*, by Dunlop, second edition, pages 1092-3.

Ohio.—In 1809 negroes and mulattoes were prohibited from settling in Ohio, unless they produced a "fair certificate of actual freedom" from some court of the United States, attested by the clerk under his seal of office. The third section of the act imposed a penalty of not less than ten dollars nor more than fifty upon any citizen of Ohio who should hire or employ in his service any negro or mulatto without such certificate of freedom.

In 1807, negroes and mulattoes were prohibited from moving to and settling in Ohio, unless, within twenty days thereafter, they entered into bond, with two or more *freehold* sureties, in the penalty of five hundred dollars, conditioned for his or her good behavior, and moreover to pay for the support of such person in case he or she should thereafter be found unable to support himself or herself.

The eighth section of the act of 1807 imposes a fine not exceeding one hundred dollars on every one who shall employ, conceal, or harbor any negro or mulatto contrary to the provisions of the act.

The ninth section declares that black and mulatto persons shall not be permitted to testify against white persons.

On the 26th of February, 1839, a very celebrated law was passed, which, by way of preamble, recites the provisions of the Constitution of the United States; declares that the then existing code of Ohio was inadequate to the protection pledged by the Constitution of the United States to the southern States of the Union, and asserts it to be "the deliberate conviction of this General Assembly that the Constitution can only be sustained as it was framed, by a spirit of just compromise;" therefore the Legislature of Ohio proceeded to establish a State system, by which State officers were to superintend the arrest, trial, and delivery of fugitive slaves to their owners or their agents, simple and efficient, and perfectly satisfactory to the people of Kentucky.

But on the 19th January, 1843, in less than four years, the act of 1839 was repealed, and the second section of an act passed 15th February, 1831, which made it a penitentiary offence (for which the confinement was not to be less than three nor more than seven years) for any person to attempt to carry out of the State, or aid in doing so, any negro or mulatto, before establishing his or her property in such negro or mulatto, before some judge or justice of the peace, agreeably to the laws of the United States, "in the county where such black or mulatto was taken," was revived. *See Statutes of Ohio, page 592 to 600 inclusive, and Laws of Ohio, vol. 41, page 13.*

Thus you perceive how closely Pennsylvania imitates Massachusetts, and how one State follows in the footsteps of its illustrious predecessor. The case of Ohio is somewhat peculiar. About the time of the origin of this agitation the Legislature of Kentucky conceived, under the fraternal relations existing between the two States, the good understanding which had always prevailed between them, the fact that many of the citizens of Kentucky had poured out their life-blood on the territory of Ohio in her defence, fighting her battles when she was weak, against her Indian and British enemies, from the days of George Rogers Clark down to those of William Henry Harrison, that if there was any State to which Kentucky could apply with confidence for the purpose of having her rights fully secured, Ohio was that State. Actuated by this fraternal feeling, Kentucky instituted a commission, composed of the late Senator Morehead, who, I trust, is most favorably remembered and known to many Senators here, and Mr. John Speed Smith, a gentleman, I am happy to say, of distinction, of talents, and of great personal worth. These gentlemen went to Ohio, and represented the difficulties which we had to encounter in the reclamation of fugitive slaves, and the trespasses which were perpetually practised on our rights by the abolitionists, some of whom we have had to send to the penitentiary, and some of whom, with professions of philanthropy on their tongues, were receiving from each slave assisted across the river the sum of ten dollars, as a reward for helping the slave to run away. Well, sir, these gentlemen, in 1839 got the Legislature of Ohio to pass the act already

referred to, the preamble to which declares that the "Constitution can only be sustained, as it was framed, by a spirit of just compromise."

Now, sir, this preamble asserts a truth worthy the State which announced it. After this preamble, assigning the reasons for the passage of the law, the provisions made were perfectly satisfactoy to the people of Kentucky, and were hailed as an exhibition on the part of the State of Ohio of that fraternal spirit which ought ever to exist among the people of the States of this Union. But, sir, that cause for rejoicing existed for a short time. It only remained for three and a half years, or something like that; for, on the 19th January, 1843, Ohio repealed the act of 1839, and revived the act of 1831, which made it a penitentiary offence in any person who should even attempt to carry out of the State, or aid in such an attempt, any negro or mulatto, before establishing his or her property in such negro or mulatto before some judge or justice of the peace, agreeably to the laws of the United States, in the county where the arrest was made. Such was the result, within the short period of four years, of the operation of this hostile feeling in the North against the institution of slavery. The act of 1831, thus revived, is, in my judgment, unconstitutional, so far as it attempts to make the arrest of a slave by his master, and taking him out of the State, a penitentiary offence; because the constitution, as judicially interpreted, authorizes any slave owner to arrest his slave wherever he may find him and remove him to the State whence he fled, irrespective of State law; and here is a State law which makes the doing of that act a penitentiary offence! Now, sir, these things, presented to the people of the southern States, must produce a deep state of excitement. Is it not natural that it should be so, when they see their northern brethren thus legislating against their rights and their interests? It has had a maddening, exciting effect, and its tendency is to sever the cords which bind us together as one people.

Sir, my hopes through all this is in the wisdom of Congress and the Judiciary. I have no faith whatever in the dissolution of the Union as a remedy. I have no faith or confidence in the Nashville Convention, as being capable of devising ways and means for remedying these evils. I have hope in the Judiciary, and the reason for that hope is in its past conduct. The case of Prigg and the State of Pennsylvania shows a just interpretation of the Constitution of the United States. And it affords me pleasure to refer to the course of Judge McLean. That distinguished jurist, in every case that has come before him, has enforced the Constitution and laws of the country, and given that interpretation to them which has enabled slaveholders before the juries of the country to obtain verdicts. I know of no just case where they have failed in so doing; and my friend beside me [Mr. CORWIN] suggests that in some cases slaveholders have succeeded when they ought not. I have confidence in the Judiciary. There lies the remedy under proper legislation by Congress. Proper legislation must come as the result of continued appeals to the wisdom and moderation of northern men.

But, sir, the act of 1793 has become a dead letter under the nullification of northern State legislation; and that, too, in direct repugnance to the spirit of the Constitution and the decision of the Supreme Court. I will read an extract from the decision. The court, speaking of the authority which the act of 1793 attempted to confer upon State magistrates, says:

"As to the authority so conferred upon State magistrates, while a difference of opinion has existed, and may exist still on the point, in different States, whether State magistrates are bound to act under it, none is entertained by this court that State magistrates may, if they choose, exercise that authority, unless prohibited by State legislation."

Thus the decision declares that these State magistrates might, if they were so disposed, exercise jurisdiction under the law of 1793, and grant the certificates by which fugitive slaves were to be returned to their owners. The very object of the Constitution was to accomplish that purpose. And yet, sir, we see the *liberty-loving* North provides for incarcerating its own magistrates in a dungeon for no other offence than that of executing an act of Congress designed to carry out the provisions of the Constitution which these very magistrates are sworn to support! When northern legislation deprives a citizen, a magistrate, of property and liberty for executing the laws which the Supreme Court decides he may rightfully execute, and which laws are essential to protect the interests of the people of the South, what can be expected but indignation, retaliation, and efforts for self-protection? Such conduct manifests a spirit, on the part of the northern people and States, not only to break up the institution of slavery by denunciatory words, but a determination to destroy it by their acts, although the Constitution should sink with it. Perhaps it is in vain that I hope for a return of kind and fraternal feelings to my own section after such hostile manifestations, proved by the statute books of northern legislatures; but I will not despair.

The act of 1793 having been nullified, I appeal to the Congress of the United States and ask if the time has not arrived when the prayer in the resolutions of my own State, which I had the honor to present, ought not to be granted? Is it not an imperative duty to pass some law by which there shall be appointed in each county of every State some judge, officer, or agent, to perform those duties which the act of 1793 confided to the State magistracy? I ought to exempt Indiana and several others of the non-slaveholding States from censure. Indiana, in the fraternal spirit which I have already commended, has adopted a system of State law for the delivery of fugitive slaves. She has also made it highly penal to "give free papers to slaves without authority; or to harbor or employ them without consent of their owners; or to encourage or assist a slave to desert or not go with his owner; or to use any violence or other means to prevent masters lawfully recovering their fugitive slaves." For any of these offences the person convicted is subject to a fine not exceeding five hundred dollars, and is moreover made liable to the party injured for damages. This is the true spirit of fraternal esteem, which should ever exist among all the States of our Union. But how long it will be before a "change may come over the spirit of her dream;" how long it may be until Indiana proves faithless to the Constitution, no human foresight can tell. I trust it may never be. But if the speeches we hear from some Senators in this hall; if the doctrines daily promulgated in northern prints and pamphlets cannot be successfully counteracted, there is the greatest danger that sectional parties, and prejudices, and individual animosities

will ultimately destroy the harmony of the operations of this Government, if they do not produce such discord and anarchy as to make the dissolution of the Union a necessary consequence. Why, sir, what do we already witness? It is proclaimed in many of the northern newspapers and pamphlets which come to us daily, that when we have passed a fugitive slave bill containing such provisions as the South regards as indispensable; when we shall have required the officers that may be appointed to investigate and to grant certificates for the restoration of fugitive slaves, that the moral sentiment of the northern people will refuse obedience to the law, if it does not manifest itself in open resistance.

Mr. BUTLER. If the Senator will allow me to make a remark in reference to Iowa. Her legislation on this subject is similar, and I think legally of the same import as Indiana. It is perhaps just to Iowa that this much should be said.

Mr. UNDERWOOD. There are many States which do not go to the extreme of Massachusetts, Ohio, and Pennsylvania; but I do not desire to take up time by reading extracts from their legislation, all of which I have carefully examined. New Jersey has her State system for the delivery of fugitive slaves—a system in which there is a manifest design to do justice to the slaveholding States—a system to which I can take no exception, unless it be that it is subject to more procrastination than is necessary. Illinois has likewise avoided giving her southern sisters offence by hostile anti-slavery legislation. But, sir, I cannot lengthen these already protracted remarks by a critical review of the legislation of all the States. I was calling the attention of the Senate to that effervescence of northern feeling which threatened to disregard, if not resist, any law for the reclamation of fugitive slaves. Why, sir, I have seen it in substance declared that you may fill the northern jails with free men and free women, but all your penalties will not induce them to execute your laws. Sir, upon what principle is such an assumption based? It is upon the ground that the laws we may pass for the reclamation of fugitive slaves are violations of the Divine law, and that no citizen is bound to execute human law when it comes in conflict with the law of God. In other words, it is the opinion of those who intend to disobey any act of Congress for the reclamation of fugitive slaves that the laws of God are paramount and superior to the laws of man, and every citizen is bound to resist the laws of man, when they conflict with his duties to his Maker. Now, if such doctrine is to prevail, one of the tenets in my creed, and which induced me to oppose the administration of General Jackson, is at once subverted. I mean my opposition to this thing of assuming the responsibility and just executing the law as we understand it—enforcing or not enforcing it, according to our will and pleasure, and setting up individual conscience and conviction to override the laws of the country. This idea permits the private citizen to say to the law makers, elected to make regulations for the government of society, "You have violated your duty; you have not understood what you were elected for; you have trampled upon the principles of the Divine law; you don't understand the laws of God, but I do, and therefore I will set all your legislation at defiance." It is the very essence of nullification, the quintessence of revolution and despotism. It is a doctrine which subverts everything like order, stability, and good-government on earth. If this doctrine is good and wholesome in the mouth of the citizen, it is equally as good in the mouth of the soldier on the field of battle, and he may refuse to obey the orders of his commander upon the ground that the Divine law enjoins, "thou shalt not kill."

Mr. FOOTE. I did not hear the Senator distinctly in what he said in regard to General Jackson.

Mr. UNDERWOOD. I say that the sentiment at the North which refuses to obey the laws of Congress, because in their apprehension those laws are in violation of the Divine law, and which sets up their understanding of the Divine law in opposition to the legislative power and authority of Congress, is like the doctrine of assuming the responsibility of executing the law according to *my* understanding, which I understand to have been the sentiment of General Jackson.

Mr. FOOTE. I understand General Jackson to have assumed, as I think very properly, that he felt himself bound to execute the law as he understood it. In other words, that he should comply with his oath of office as a conscientious man, according to the best lights that the God of Heaven had vouchsafed to supply him with. Sir, that is very different from the conduct of those men who impiously, and profanely, and indelicately declare that they understand their duty, but that they will not perform it; that they realized the obligations of their oaths, but that they preferred perjury to the performance of their oaths; that they understand the requisitions of the fundamental law of the land, and the acts of Congress made in conformity therewith, but, with a vain-glorious egotism most astounding, they feel themselves authorized to disregard the Constitution and the law, on the imaginary ground that they suppose that their obligations to the principles of the law of nature authorize them to pursue that course. Their difficulty is not in relation to the meaning of the Constitution, but in regard to its obligations. General Jackson never denied the obligations of the Constitution, but asserted his own right to judge of the meaning of that Constitution, as I think we must all do.

Mr. UNDERWOOD. The idea I wish to enforce is, that the highest man in the nation, the President of the United States, as well as the humblest citizen, are equally under obligations to obey the laws of their country, as constitutionally expounded by the judiciary. That is the tenet I wished to enforce. And I say that, according to the manifestations given in many quarters, and especially in a letter which I have seen addressed to the Senator from Massachusetts, [Mr. WEBSTER,] the ground is distinctly assumed, that any legislation of Congress for the purpose of enforcing the obligations which the non-slaveholding States owe, under the Constitution, to the slaveholding States, is to be disregarded, on the principle that such legislation is intended to sustain and uphold slavery, and therefore violates the laws of God. Sir, these people, who profess to live up to the laws of God with such strictness, forget the doctrine which is taught in the holiest of all books, that government is ordained of God; that it is a duty to submit to the powers that be, and to render unto Cæsar the things which are

Cæsar's. The humble and religious citizen regards the laws of his Creator as first in his love. But he can have no difficulty in reconciling his love and duty to God with his obedience to the laws of his country. If these laws are morally wrong, it is the citizen's privilege to attempt to change them, through the ballot-box and right of suffrage. But submission to them, while they are in force, is a duty; and he is no more to be regarded in the light of a criminal or sinner for such submission or obedience than the person who, under duress, with the pistol at his bosom, to save his own life, plays the part of hangman for the assassin or pirate in taking the lives of his companions. There is a proper and constitutional mode by which bad laws may be assailed and repealed; but until repealed, they must be obeyed, or there is an end of government. If any one citizen is to be permitted to set up his individual sense of duty, and his interpretation of the Constitution and laws, in opposition to the legislative and judicial action of the constituted authorities, then every other has the same right, and each and all may set government at defiance. Despots and the strongest will rule in that society, if indeed there could be society, where such doctrines prevail. To tolerate such a principle in action would disorganize and destroy all government; and I trust that if it be the pleasure of Congress to pass an efficient bill for the reclamation of fugitive slaves, that the second sober thoughts of our northern fellow-citizens will induce them to submit to it, and comply with its provisions.

A few remarks further, and I quit the subject. Unfortunately for this country, the question of slavery has fallen into the hands of politicians and the political press. And, when the press and politicians take hold of a subject, and begin to wield it for the purposes of party advantage and gain, and for the promotion of the fortunes of individuals, there is always danger of extreme opinions and errors. Excitement is the element in which the political press lives, and moves, and has its being. Excitement is its meat, and drink, and daily bread. Its subscription list is increased in proportion to the excitement prevailing in the public mind. When the passions of men are roused, they must have the newspapers in which the cause is discussed. A *crim. con.* or a murder case is a rich harvest for the press. It makes the paper sell. So do slavery agitations and threats of dissolving the Union. The gentleman to my right [Mr. HALE] has avowed in his place that the politicians of the North and South, to a very great degree, have seized hold of this particular question of slavery out of which to make capital for their own elevation. The history of our race is a history of excitements and revolutions; and generally, when a daring, talented, and bad man seeks political elevation, his first step is to get up an excitement about something. He knows that scum and sediment have equal chances to float when the caldron is bubbling and boiling. When men are phrensied, Danton, Robespierre, and Marat can rule. Excitement, passion, impulse are the rounds in the ladder which elevate some men to distinction. To alarm the people of the South with the loss of their slaves, and then to make them believe, that there safety depends in an eminent degree upon sending the alarmist to Congress to counteract the abolitionists, may be masterly policy in the estimation of a southern politician, struggling to rise from obscurity. In the North, the obscure aspirant may kindle his fire with essays against the sin of slavery, and in favor of the right of rebellion against human laws which contravene the laws of God; and thus hope to show that the surest and most direct means for the gratification of northern sympathies, and the accomplishment of northern schemes, is to send him to Congress. But, sir, in all this agitation by scheming politicians, I perceive very little more than the selfish tricks and devices of unhallowed ambition. Such proceedings may have their effect upon the fortunes of individuals and political parties, but I see in them nothing to cheer the heart of the true patriot or the true christian, or to promote the real welfare of either our slave or free population. In our country, where freedom of speech and of the press are constitutional rights, such agitations as I have alluded to cannot be suppressed. And we know that, stimulated by the desire for office, for political elevation, and even for the emoluments of official station, men will, to secure those objects, continue to agitate and excite upon every and all subjects which may present grounds of hope and prospects of success to their ambition.

As this agitation cannot be suppressed, what, then, can be done? All that we can do is to inform the thinking, working, unofficial portion of our fellow-citizens—those who are not in the pursuit of office; those who wish to support their families by honest industry; those who look to Government, and only ask to have life, property, and character protected, contracts enforced, and crimes punished—all that we can do is to enlighten these masses of our fellow-citizens, by exhibiting truthfully the true condition of affairs. If that be done, a calm conservative reflection must and will follow; and the busy, prospering masses of our vast country will leave the domestic institutions of the several States to be managed in their own way, without taunt or interference, and will faithfully comply with every constitutional requirement. Sir, I hope it may be done. I hope that we can get the thinking portion of the people to agree to let each other's affairs alone. Intermeddling is the evil of which, more than all others, we have a right to complain.

Many years ago I addressed a lengthy article to my constituents on the right of petition. I attempted in that article to show that the right was subject to certain limitations. I insisted that there was no *right* of petition where the body petitioned had no power to grant the prayer of the petition. I am happy to say that a proposition so clear has been vindicated during the present session of Congress by rejecting a petition asking for a dissolution of the Union, on the ground that the Congress of the United States had no power to grant its prayer. There is another limitation which I hope ere long to see vindicated and sustained by the action of Congress. It is this: that no one has a *right* to petition for the modification, or repeal, or passage of a law which cannot, and does not, operate on him or his property, but which affects the persons and property of a separate and distinct community or society of people. In such a case the petitioner has no individual interest at stake. He is assuming to dictate for others, and to prescribe laws for them which are not to operate upon

him. Such a petitioner deserves to be called an intermeddler, without the color of *right* to justify his conduct. These intermeddling petitions are the foundation of a great deal of the difficulty which we now have to encounter in producing harmony and good feeling between the North and South. I know that there are persons at the North who, to some extent, think themselves responsible for the institution of slavery. But how are they responsible? Are they responsible for its introduction into Kentucky? Not at all. Are they responsible for its continuance in Kentucky? Not at all. Will the laws of Kentucky operate upon them? Not at all. When I endeavored to show, not long since, that it was officious in the people of the non-slaveholding States to petition in relation to the existence of slavery and the slave trade in the States and this District, the only way in which the gentleman to my right [Mr. HALE] attempted to evade my suggestions was by saying that the petitioner, now residing in New Hampshire, might emigrate to Kentucky, or come into this District, and hence he had an interest in the laws of either place. They might affect him hereafter.

Mr. HALE. Will the Senator allow me to ask him a question?

Mr. UNDERWOOD. Certainly.

Mr. HALE. I ask the Senator, then, if, during the fifteen years which he has been in Congress, he has ever known a petition to be presented to interfere with slavery in Kentucky?

Mr. UNDERWOOD. Yes, sir; certainly I have. Why, petitions are constantly being presented here, praying Congress to abolish the slave trade between the States, in violation of the decision of the Supreme Court of the United States on that subject.

Mr. BUTLER. I am very confident that the Senator from New Hampshire has himself introduced petitions asking for the abolition of slavery everywhere. I am aware that he has disavowed the right of Congress to do it; but he has allowed himself to be made the instrument of presenting petitions of this description.

Mr. UNDERWOOD. Petitions for the interruption of the trade in slaves between the different slaveholding States have often been presented here. It is a direct intermeddling with State concerns, and the laws which they pray may be passed would not operate upon the petitioners. My argument is to show that those who are not subject to the law, who do not feel its effects upon their persons or property, have no right to dictate laws for those who do feel and are bound to obey. One incorporated town in the same State has no right to petition and dictate to any other town the nature and kind of local regulations it shall adopt, either in respect to police or improvements. So of counties and States, and the people of counties and States. Whatever is local belongs appropriately to the people of the place, and others have no right in any manner to interfere. Slavery is a local institution, and each jurisdiction has the exclusive right to dispose of it free from foreign interference. But it is contended the people of the North may rightfully interfere with slavery in the District of Columbia, because they elect legislators in part for the District, and are, therefore, responsible for it. I deny it, sir. I admit that Congress has the constitutional power to abolish slavery in the District of Columbia—not a moral right, but a constitutional power to do it. Without going into the argument upon that question now, I admit the power; but, then, I say that, because the Constitution of the United States confers on Congress the power to exercise exclusive legislation in all cases whatsoever for the District of Columbia, it does not by any means follow that the members of Congress are to take their instructions from and legislate to meet the views of the electors by whom they were elected. The Governor or President who appoints a judge, has no right on that account to control his judgments and decisions. Although the people of this District have no voice in the selection of their legislators, nevertheless the powers vested in Congress for their government are held in trust, according to our republican theory, for the benefit of those to be governed, and not for the gratification of the whims and caprices of the electors or appointing power. How supremely ridiculous would it be for the electors of the President (themselves chosen as the mere organs through which to express the popular will) to undertake to prescribe the manner in which the President shall discharge his executive duties. I hold that the members of Congress are bound, by all the principles of republican government, to look to the views and feelings and interests of the people of the District, in legislating for them, and not to the opinions and wishes of the citizens of Kentucky, or Massachusetts, or New Hampshire, who may never have been here, or who cannot know, understand, or express the peculiar condition, wants and interests of the people here as well as they can, acting for themselves. I therefore regard the petitioner, residing in a State, who presents his petition asking Congress to pass such laws for the government of this District as the petitioner approves, just as much an intermeddler as the citizen of the District would be, were he to petition the Legislatures of the States in relation to their internal and domestic affairs. It is a great misfortune that vanity and conceit are perpetually prompting the Pharisee and hypocrite to the violation of what we in Kentucky call the eleventh commandment, which enjoins, "mind your own business, and let other people's alone." Courtesy and curiosity will always induce gentlemen and legislative assemblies to receive and consider with respect all propositions and suggestions for the improvement of mankind which are seriously brought to their notice. But when the same thing has been presented and rejected so often as to defy computation, it becomes offensive; especially when the petitioner is an intermeddler in matters which deeply concern others, and have little or no connection with the affairs and business of the petitioner. The *right* of petition is founded on the personal grievance of the petitioner. I have always regarded this right of great practical value to the citizen; and, where the *right* exists, there is a corresponding duty on the part of the body petitioned to act upon the petition, and consider the grievance complained of. How is the existence of slavery in this District a grievance to the citizen of Maine? Is not the existence of slavery in Russia, Brazil, Cuba, and Kentucky, equally a grievance to him? How does its existence anywhere affect him? Is it because his sympathies and sensibilities are wounded, that he labors

under such a grievance as to give him the right of petition? If this be the foundation of his right—and I confess I see no other—then there is no limit to the right of petition. It covers and extends throughout the world, and the men and women of Maine have the same right to consume the time of the Emperor of Brazil, or the Legislature of Kentucky, with their petitions, that they have to consume the time of Congress. Whatever rights wounded sensibilities may create, and whatever motives may thence arise for political action, they should be confined to the jurisdiction or country in which the laws are to operate. This rule allows every citizen unrestricted liberty, by petition or otherwise, to ask for the repeal or passage of laws for his own government, and prohibits intermeddling with the laws of a people inhabiting a separate jurisdiction or country.

Now, Mr. President, the great question is, whether we can get along as one people under the difficulties which surround us. I hope and trust that it may be done; but all must admit that there is danger that it will not be done. I am convinced that there are at present a great many persons calculating the value of the Union; I know that there are a great many who are disgusted and exasperated by the perpetual taunts which issue from the North upon the institution of slavery, and by the false charges of cruelty and inhumanity made against slaveholders. The rapid natural increase of our slave population is a complete refutation of the charges of cruelty and inhumanity. Among the discontented I have heard declarations to this effect: that, if the anti-slavery agitation is to be perpetuated; if Congress is to accomplish no salutary legislation, month after month, and year after year, (and what have we been doing for the last four months but waste time on the slavery question?) if this state of things is to continue forever, it would be better to separate from the non-slaveholding States at once than to continue a connection productive of so much crimination, hatred, and bickering. The rich agricultural productions of the South are often referred to by the discontented, and a more profitable foreign commerce anticipated under the auspices of a southern confederacy than that we now have. In a word, sir, I have heard the *glorious* and *happy* results of separation depicted in glowing, gorgeous words, and the destiny of the new republic, with Cuba as a component part, commended as opening a new chapter in the history of man unequalled by anything in the pages of the past. I have heard all these things with incredulity and mortification; but I cannot doubt that it is seriously contemplated to indoctrinate the southern mind with the idea of their accomplishment, and ultimately to achieve it, by means of the agitation and excitement growing out of the slavery question. I cannot shut my eyes to the danger that these things may be attempted, when I reflect that slavery agitation has almost dissolved the Government by rendering it inefficient and unable to go on with the public business. I know that many men, devotedly attached to our present Union, are looking seriously into the existing state of things, which cannot remain as they are. Southern sensibilities are aroused, (and the South has sensibility as well as the North;) southern interests are deeply touched; and, sir, the question is in every mouth, "what are we to do? what is to be done?" No one can yet tell what answer will be given to these questions. I believe that a dissolution of the Union is the worst remedy possible—indeed, I believe it is no remedy at all—for the maintenance of the institution of slavery. I believe it would be the destruction of the institution almost instantaneously in the border States. That is my fixed and settled conviction. But, sir, will that conviction influence the minds of men who are goaded, who are insulted, as they conceive, who are subjected every year to every species of annoyance in reference to an institution which has existed more than two hundred years, and which has taken deep root amongst them? Sir, it will not. They have a duty to perform, as they conceive, in reference to their honor as well as to their interests. And they reason thus: Our slave property is unsafe, and rendered so by the abolition movements of the non-slaveholding States; our condition, in respect to our slaves, could not be much worse than it now is if the Union were dissolved, and in many other respects it would be greatly improved; therefore, we yield to the impulses of an honorable sentiment in separating from those whose sympathies are not with us, but with our slaves; those who have no esteem for us, but whose compassion for the negro is ready to excuse the most horrible tragedies which the mind can conceive or brutality execute. I think those who reason thus are mistaken in supposing that a dissolution of the Union is a remedy for any evil, or that it is required to vindicate their honor. I believe the destruction of our existing Union and Government would be productive of greater evils to this country and to the whole world than any other event could accomplish. But I must stop. I cannot undertake to point out and trace its stupendous consequences.

My object in presenting these considerations to the Senate has been to show that the fugitive slave bill, assailed by the gentleman from Connecticut, [Mr. Baldwin,] ought to be passed. Nothing short of its passage, as many of the Northern States have nullified the legislation of Congress, and paid no respect to the decision of the Supreme Court, can give repose to the country. Unless we likewise intend to make the provisions of the Constitution a dead letter, it is essentially incumbent upon Congress now to act and legislate upon the subject. I do not apprehend the dangers to the free blacks of the non-slaveholding States anticipated by the Senator from Connecticut, and those with whom he associates. As I have before suggested, I am willing that an affidavit should be required, or that evidence should be produced to the county court, or any suitable tribunal in the neighborhood from which the fugitive escaped, and a record of the loss of the slave, and a description of his person there made up, a copy of which record shall be produced when the warrant for his apprehension is demanded. I am willing to do anything that will give satisfaction to gentlemen from the North, and fully secure their free colored population, and I am willing to take anything that is reasonable; but, whilst I am liberal, in the name of the Constitution I demand an efficient law, one that shall place us where the act of 1793 enabled us to stand before abolition nullified it. Let that be done, and this Congress will have done much to harmonize the different sections of the Union. It is all we can do. The judiciary must do the rest. But,

by the coöperation of the legislative and judicial departments, every interest will be protected, the Constitution will triumph, and the whole country become tranquil and happy.

Thanking the Senate for their kind indulgence, I shall now take my seat, and, when the bills founded on the resolutions offered by my colleague shall come under consideration, I may perhaps propose to discuss one or two points involved in them.

Mr. CORWIN and Mr. FOOTE rose together.

Mr. CORWIN. Will the Senator from Mississippi yield me the floor a few minutes, for the purpose of explaining a point in the laws of Ohio, referred to by the Senator from Kentucky?

Mr. FOOTE yielded the floor.

Mr. CORWIN. Mr. President, the Senator from Kentucky has been pleased to animadvert with some severity upon the legislation of Ohio touching fugitive slaves. I am satisfied, if my friend from Kentucky would review carefully what has been done on this subject by the Legislature of Ohio, he would find reason to retract a portion of his remarks, and certainly to abate much of that asperity of feeling which his mistaken views have inspired. I only desire to occupy the Senate a moment, while I correct what I deem a mistake as to the unconstitutional character of the law said by the Senator from Kentucky to have been revived by the statute of 1843. This act of 1843 repealed the celebrated act passed as we know by the Ohio Legislature, at the instance of Commissioners Messrs. Morehead and Smith, appointed by the authorities of Kentucky. The law of 1839, passed at the instance of the Kentucky Commissioners, provided against kidnapping, amongst other things.

Sir, if the provisions of the act, which was revived by the law of 1843, were just such as the gentleman has represented, I will not pretend to say here, without examination, whether they were or were not constitutional. The law of 1843 was, at that time, the only law in Ohio providing against kidnapping. When that law was repealed, it was necessary to reënact the old or a similar law against the very common offence of kidnapping. To this end, a law which had been long in force, and which had been suspended by the act of 1843, was revived. I have not this revived law before me, but I believe it was simply an act making it penal to take by force out of the State any freeman, black or white. Such laws, I imagine, or laws very similar, may be found on the statute books of many if not all the States. Now, Mr. President, if the act revived does, as the gentleman supposes, contain a provision forbidding the seizure of any colored person, under any pretence, *without warrant first obtained*, and was therefore unconstitutional, and an infraction of the rights of slaveholders, then the celebrated act of 1839, passed at the instance of Kentucky, (by her Commissioners Smith and Morehead,) was also unconstitutional; for I am very sure it contained a provision making it a penitentiary offence for any person to seize a colored man until he should first obtain process for that purpose from a judicial officer.

Sir, we hear loud complaints of the revived Ohio law, such as that it disturbed the fraternal relations of Ohio and Kentucky. It was just what Kentucky herself had asked, and agreed to in the celebrated act of 1839. By that law, if a Kentuckian laid his hand on a black man in Ohio to arrest him as a slave, without first filing affidavit and obtaining a warrant, he must go to the Ohio penitentiary. These, sir, were the terms fixed by treaty between the two States; these were the happy, peaceful, fraternal relations of the two States as settled by themselves. Sir, it seems to me, if the present law of Ohio against kidnapping be unconstitutional, she has no right to complain, since she herself asked for and agreed to the same provision, in the act of 1839.

Mr. President, this is a matter of small significance, it is true; but it is well to settle the matter of history aright before it finds its way into Greeley's almanac, so that posterity may not be deceived. I will only add, sir, that whatever the letter of our laws may have been, I have never known or heard of a case in Ohio where any person was punished for arresting a slave under any circumstances, where the person charged could prove that he was really the owner or agent of the owner of such slave.

Mr. UNDERWOOD. I did not by any means intend to cast imputations on the honor of the State of Ohio for reviving her act of 1831. I know that a great many States, from the best motives, have occasionally passed unconstitutional laws. The Legislature of my own State has passed laws of this sort, and our judicial tribunals have pronounced them unconstitutional. I did not intend to insinuate that the Legislature of Ohio had dishonored itself, or been actuated by any impure motives. On the contrary, I suppose they acted from the best motives, but had erred, as all Legislatures may do, and as many of them often do, not even excepting the Congress of the United States. My own reason convinces me of their error, and I am fortified in my opinion by the decision of the courts. Judge Baldwin, in his circuit court decisions, has, I think, laid down the law correctly. Yet he may be mistaken. He says:

"The citizen of another State from which a slave absconds into the State of Pennsylvania, may pursue and take him without a warrant, and use as much force as is necessary to carry him back to his residence."

And again:

"The Constitution of the United States does not confer, but it secures the right to reclaim fugitive slaves against State legislation."

And again:

"The right of the master results from his ownership, and the right to the custody and service of the slave by the common law," &c.

The judge proceeds upon the idea that the citizen, by virtue of the Constitution of the United States, has the right to pursue and recapture his fugitive slave, and to take him back to the State whence he fled without being restrained by the constitution and laws of the State in which the arrest may be made in any manner whatever. Now the Ohio law would send an individual to the penitentiary for acting in pursuance of his common-law right secured by the Constitution of the United States. I may, however, be mistaken in this, and shall be very happy to find that my constituents are not to be sent to the penitentiary of Ohio, by her laws, for recapturing and removing their fugitive slaves.

When I was a very young man, and a member of the Legislature of Kentucky, I was directed by a committee to draw up a report vindicating the conduct of the Legislature in refusing to comply

with a demand made by the Governor of Indiana, for one of its members, as a fugitive from justice. His name was Stevens. He had seized, without warrant, and brought back to Kentucky certain fugitive slaves, and for this offence had been indicted for kidnapping, or man-stealing. I made the best argument I could to sustain the Legislature in refusing to surrender Mr. Stevens. Our Governor, as well as I recollect, submitted the question to the Legislature as a question of privilege. I tried to show that the Constitution of the United States only required the delivery of fugitives from justice, and although an indictment had been found, and a *prima facie* case made out, still we had a right, under those clauses which I read and commented on yesterday, to examine and decide the question of guilt or innocence, to ascertain whether he was a fugitive from justice or not. By that process of reasoning we assumed jurisdiction, investigated the merits of the case, and determined that Mr. Stevens was not a fugitive from justice, and thereupon refused to comply with the demand made by the Governor of Indiana. I have doubted the correctness of the decision, but I give the case for what it is worth. It at least shows that the gentleman from New York [Mr. SEWARD] was not altogether acting without precedent when, as Governor of that State, he decided the very same question in the same way. The case should also teach us charity and forbearance towards each other.

Although in the Stevens case I was the principal actor, and drew up the report, I freely confess that subsequent reflection has induced me to fear that we were not on that occasion acting in accordance with the Constitution.

Sir, the old doctrine, the true and safe doctrine, when this Government was formed, was, that there could be found, in every State of the Union, honesty, and talent, and patriotism, and virtue enough to secure justice and a fair trial in all criminal cases. The constitutional provision requiring the surrender of fugitives is based upon that belief of our ancestors. But we have reached a period in our history when we begin to suspect, fear, and distrust one another. Perhaps the foundation of this distrust may grow out of the improper feelings and principles of our own hearts. These things ought not to be. I wish to correct them, if possible, and get back to the old ground on which the Government was founded. If that can be done, a brighter and more glorious prospect never presented itself to any people on the face of the earth. Let us act as our fathers did in their day, and the clouds will pass by, and the sun of peace, joy, and prosperity enlighten the whole Union.